

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PETER TINKHAM, ET AL.

v.

CIVIL ACTION NO: 05-10470 MLW

DOREEN R. KELLY, ET AL.

MOTION FOR ENTRY OF DEFAULT JUDGEMENT

Plaintiffs, Peter Tinkham and Juliet Alexander, pro se, move this Court for an entry of default judgement against all "School Defendants" represented by John Davis, Esq., viz., Doreen R. Kelly, Barry Mintzer, Jean Curtis Loud, Robert Doyle, Joan Bernheimer, Judi Alberton, Donna Kyed, Margaret Verret, and Claire Jackson. As grounds for their motion, Plaintiffs state:

1. Defendants have been in default, pursuant to Fed.R.Civ.P., 12(a)(1)(B) for twelve days and counting. Sixty days from the date the waiver of service was sent, pursuant to Rule 4(d), Defendants are required by Rule 12(a)(1)(B) to serve an answer upon Plaintiffs to their Complaint. They have not done so.
2. Defendants have filed a Motion to Dismiss pursuant to Fed.R.Civ.P.41(b) containing objections founded upon Fed.R.Civ.P., Rules 8 and 17. This motion does not benefit from the extension of time granted under Fed.R.Civ.P.,12(a)(4) because it is not a Rule 12 motion. (SEE: Baker v. Universal Die Casting, Inc., 725 F.Supp. 416 (W.D.Ark. 1989)). The sixty day period provided for by Rule 12(a)(1)(B) controls.

Therefore Defendants are in default for failure to answer in a timely fashion and Plaintiffs move for consideration of a default

judgement by this Court.

Respectfully submitted



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August 12, 2005

I hereby certify that a true copy of the above document was served upon the attorney of record for the other party by mail on August 13, 2005.